

# Considerations for Water Right Adjudication in Northern Idaho

Presentation to Members of the  
Coeur d'Alene Chamber of Commerce  
January 30, 2006

Presentation by  
Dave Tuthill

Idaho Department of Water Resources



# Discussion Items

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- Definitions
- SRBA Update
- Integration with Rathdrum Aquifer Management Plan
- Basin Selection
- Legislation
- Budgetary Issues
- Next Steps

# Two ways to establish water rights in Idaho

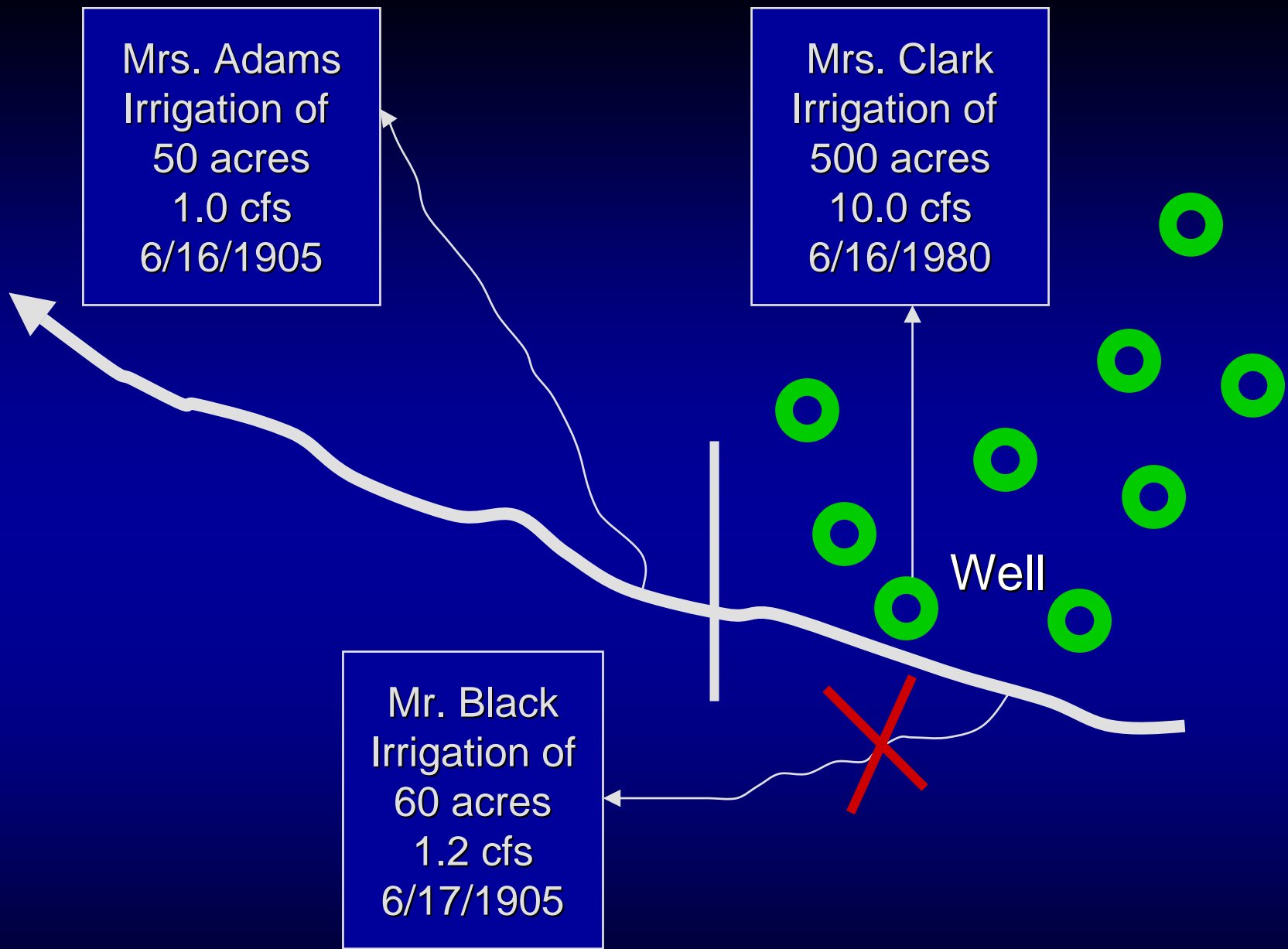
- Apply for a permit with IDWR
- Divert the water and beneficially use it
  - “Grandfather right”
  - “Beneficial Use Right”
  - “Constitutional Right”
  - No longer available except in certain de minimis situations



# Elements of a Water Right



- Diversion
- Beneficial Use



cfs = cubic feet per second

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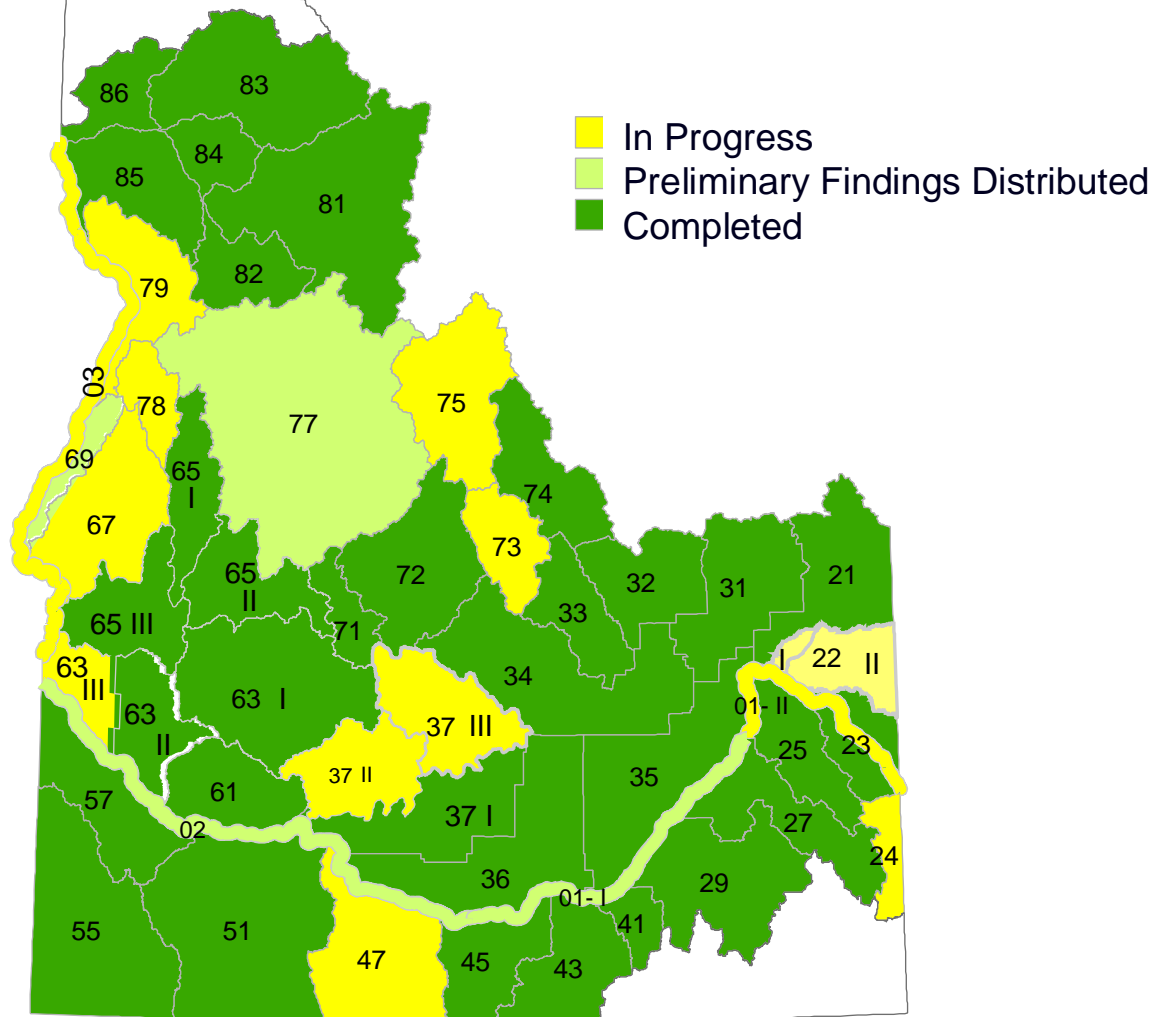
How do we *start* to sort this  
out???

Adjudicate the water rights!

# What is a Water Right Adjudication in Idaho?

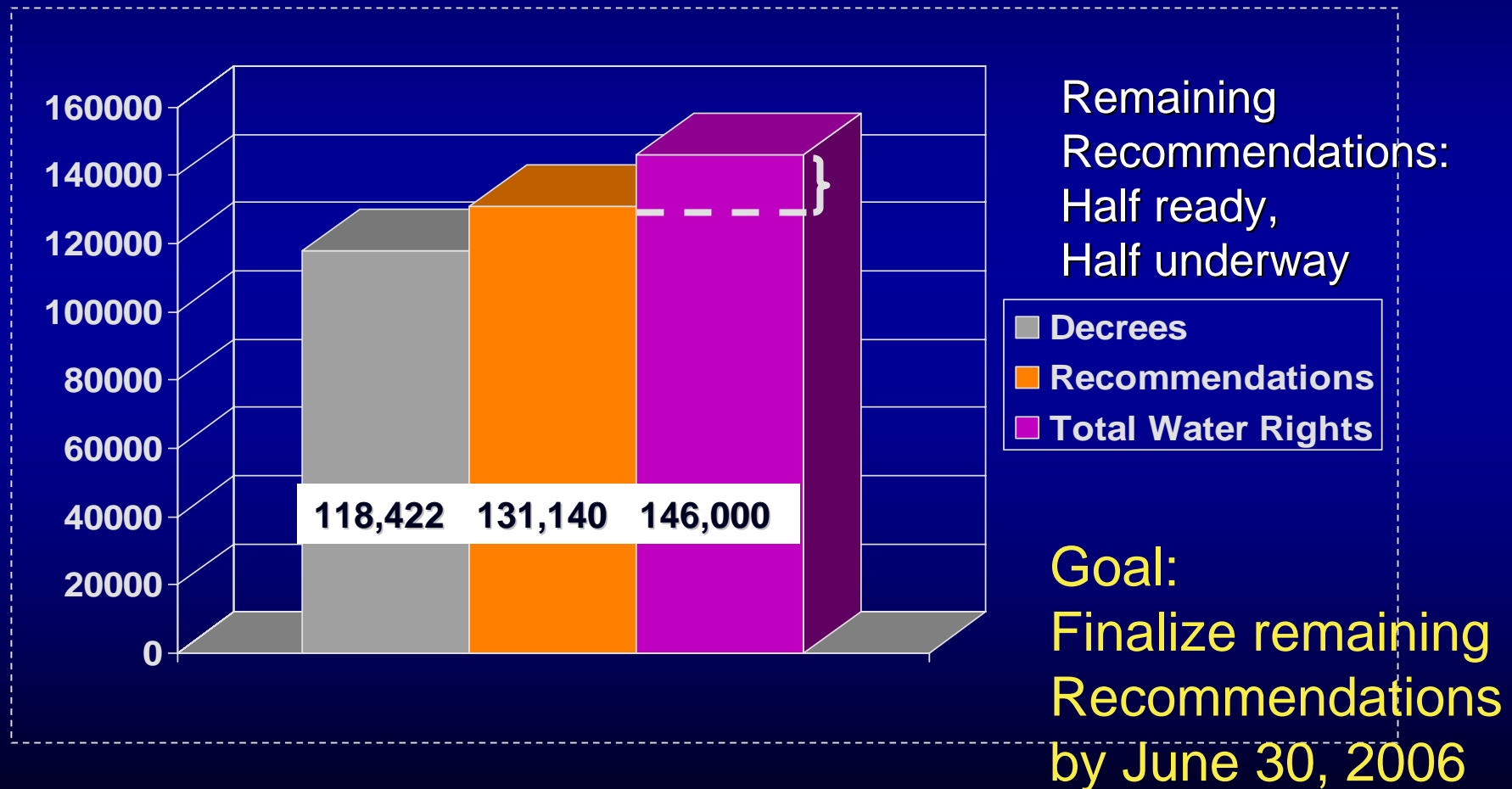
- Similar to most Western States
- Determination in State Court of the water rights in a given basin, with the aid of the Idaho Department of Water Resources as technical expert, based on claims of water right holders
- Individuals, companies, all levels of government and tribes are compelled to participate
- Provides the basis for water management

# Snake River Basin Adjudication Director's Reports For Irrigation and Other Rights





# SRBA Present Status – State-Based Rights



# Pros and Cons of Water Right Adjudications

## Pros

- Beneficial use rights are determined
- Unused water rights are culled
- Provides basis for conjunctive administration
- Federal and tribal rights are determined

## Cons

- Cost
  - Water users
  - Legislative time
  - Judicial time
  - Governmental agencies
  - Public – General fund
- Dormant problems are discovered

# Pros and Cons of Water Right Adjudications

## Pros (cont.)

- Dormant problems are resolved
- Enhances the opportunity to resolve interstate issues without compact negotiations
- Knowledge is power

## Cons(cont.)

# Recommended and Adopted Management Plan

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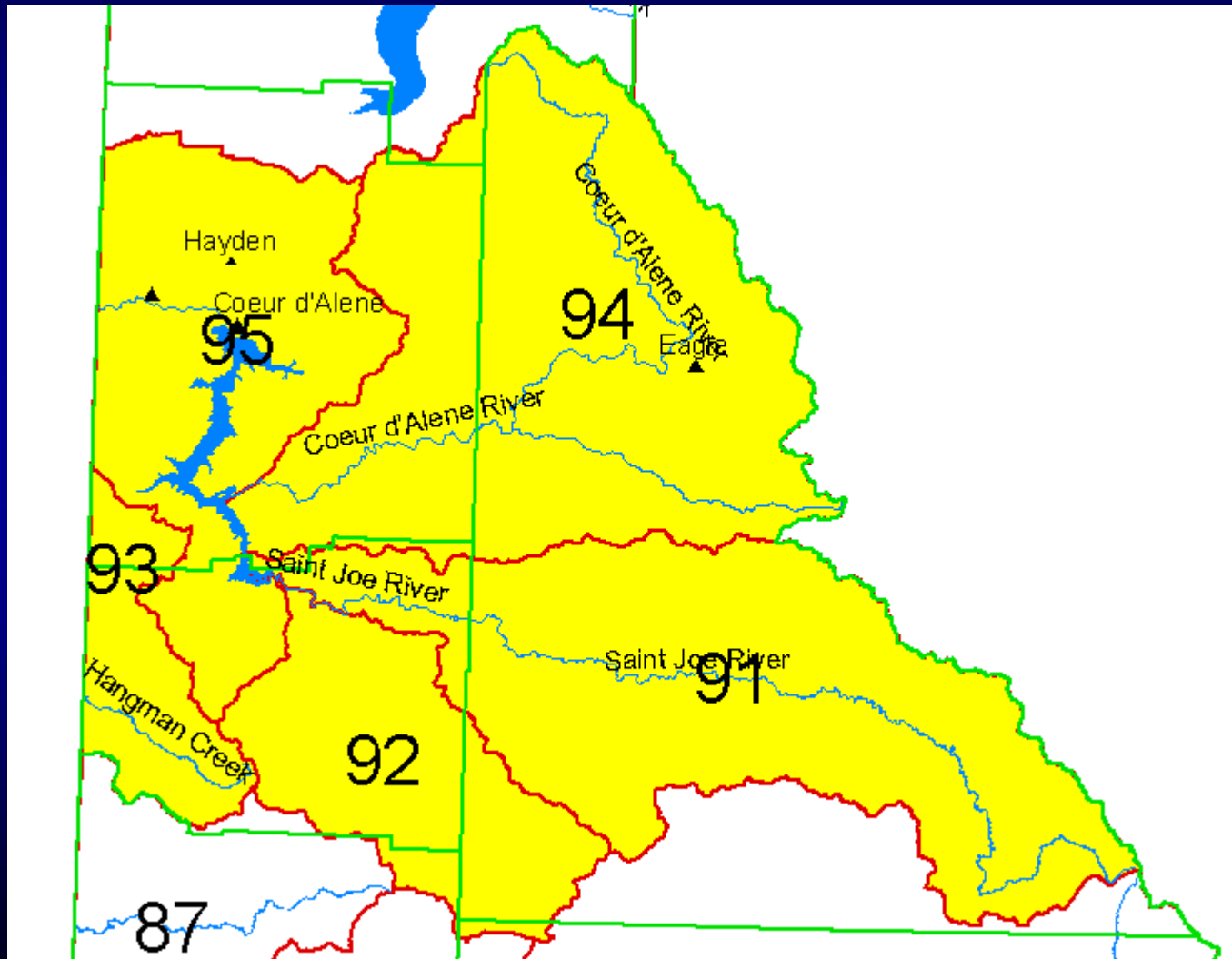
- Goal 2, Item B

The Department of Water Resources will work with the Rathdrum Prairie Ground Water Management Advisory Committee and local elected officials to determine the **feasibility, cost and potential funding mechanisms** to begin adjudication of water rights in the Coeur d'Alene Basin. **The IDWR will include the preferred alternative in its Fiscal Year 2007 budget request along with any legislation necessary to undertake the adjudication.**

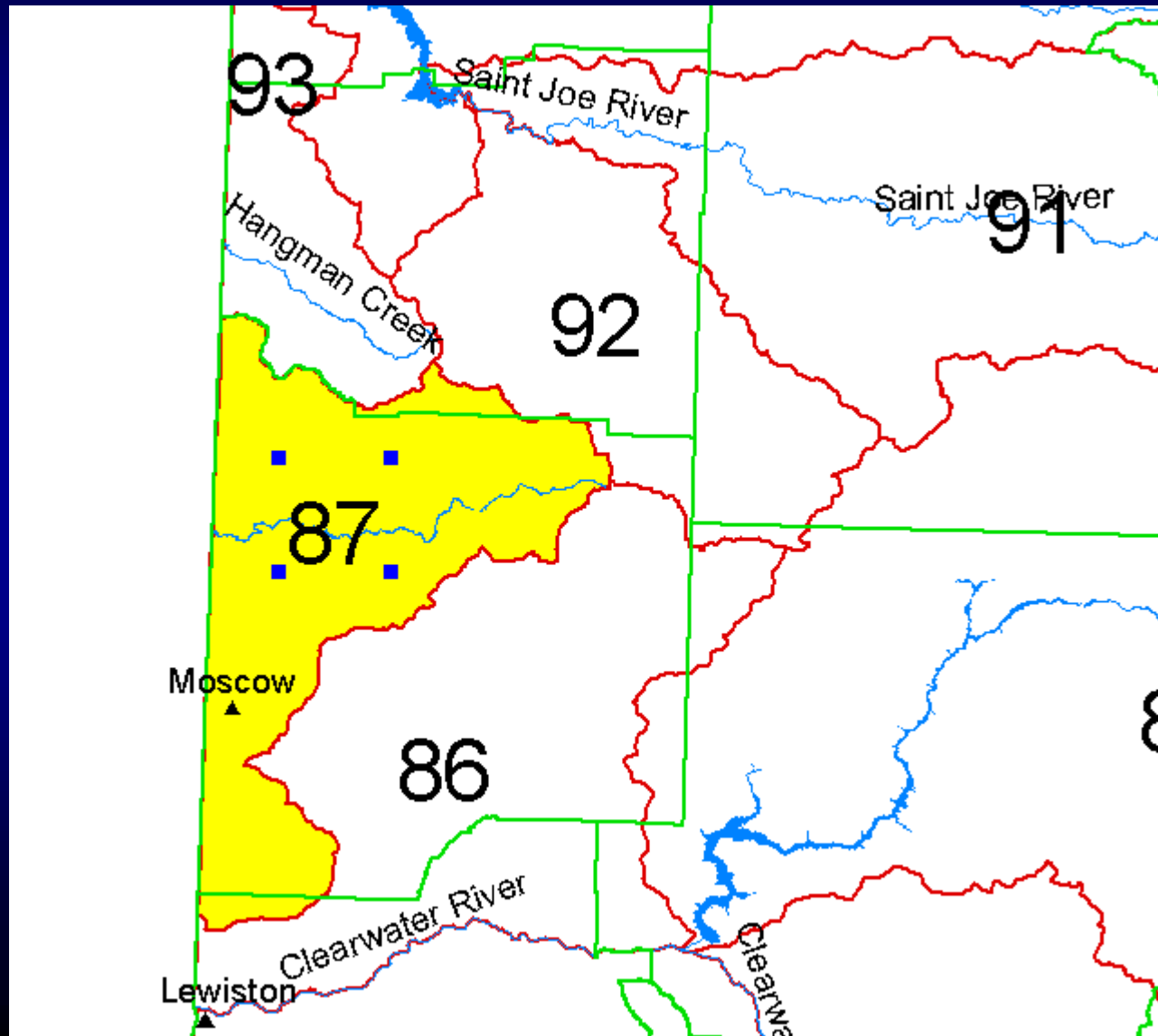
# JFAC Guidance for 2005

- SECTION 4. It is legislative intent that the Department of Water Resources work with the Rathdrum Ground Water Management Plan Advisory Committee and local elected officials to determine the **feasibility, cost and potential funding mechanisms** to begin adjudication of water rights in the Coeur d'Alene Basin. The Department is requested to include the preferred alternative in its Fiscal Year 2007 budget request along with any legislation necessary to undertake the adjudication.

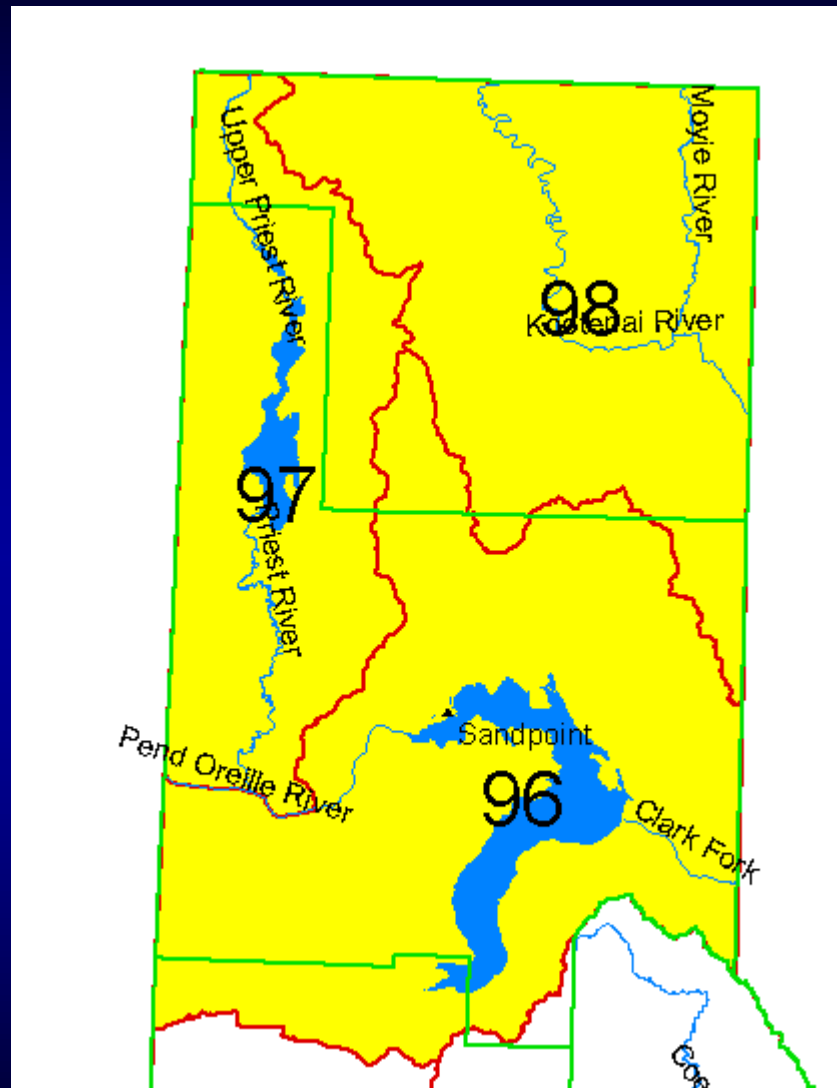
## Basins 91-95



## Basin 87



## Basins 96-98





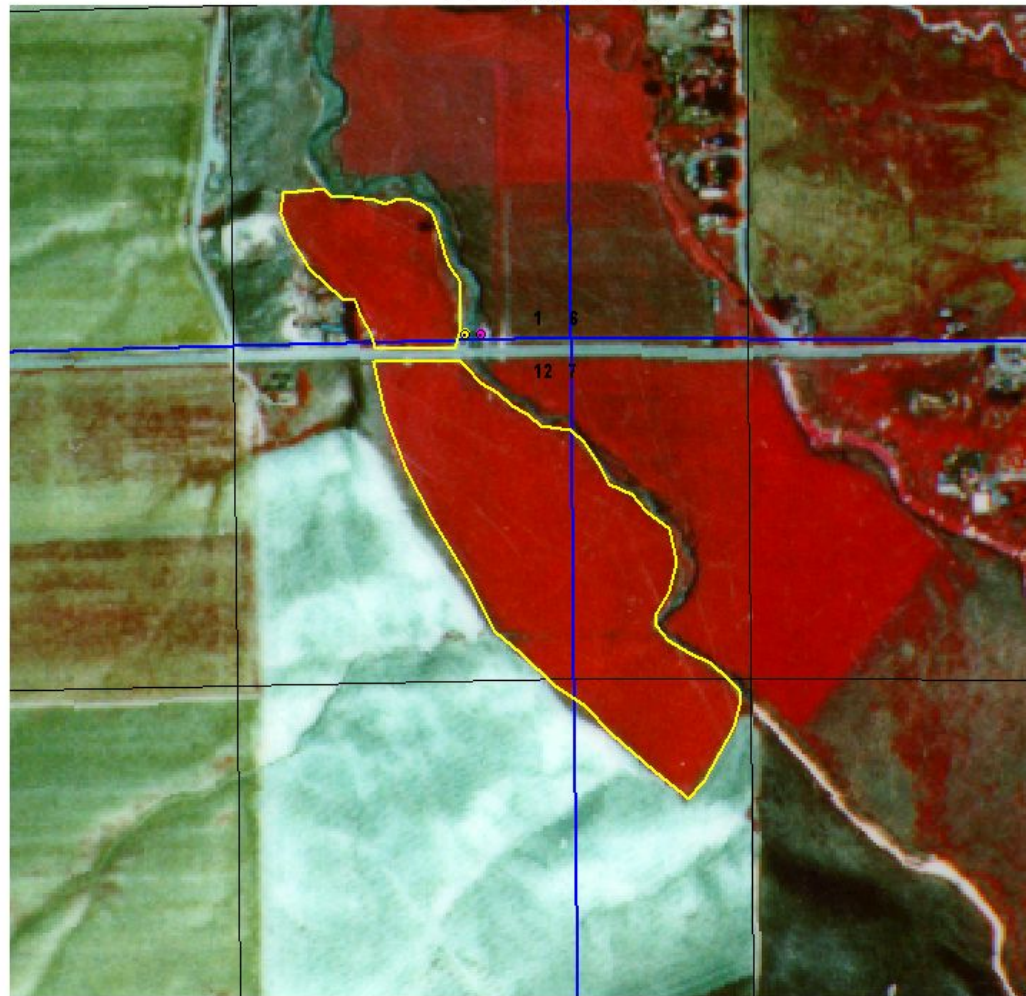
# Features of a 21<sup>st</sup> Century Adjudication

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- Tabular (words) and spatial (map) information for all water rights

# IDAHO DEPT OF WATER RESOURCES

## 41-00001B



660 0 660 1320 Feet

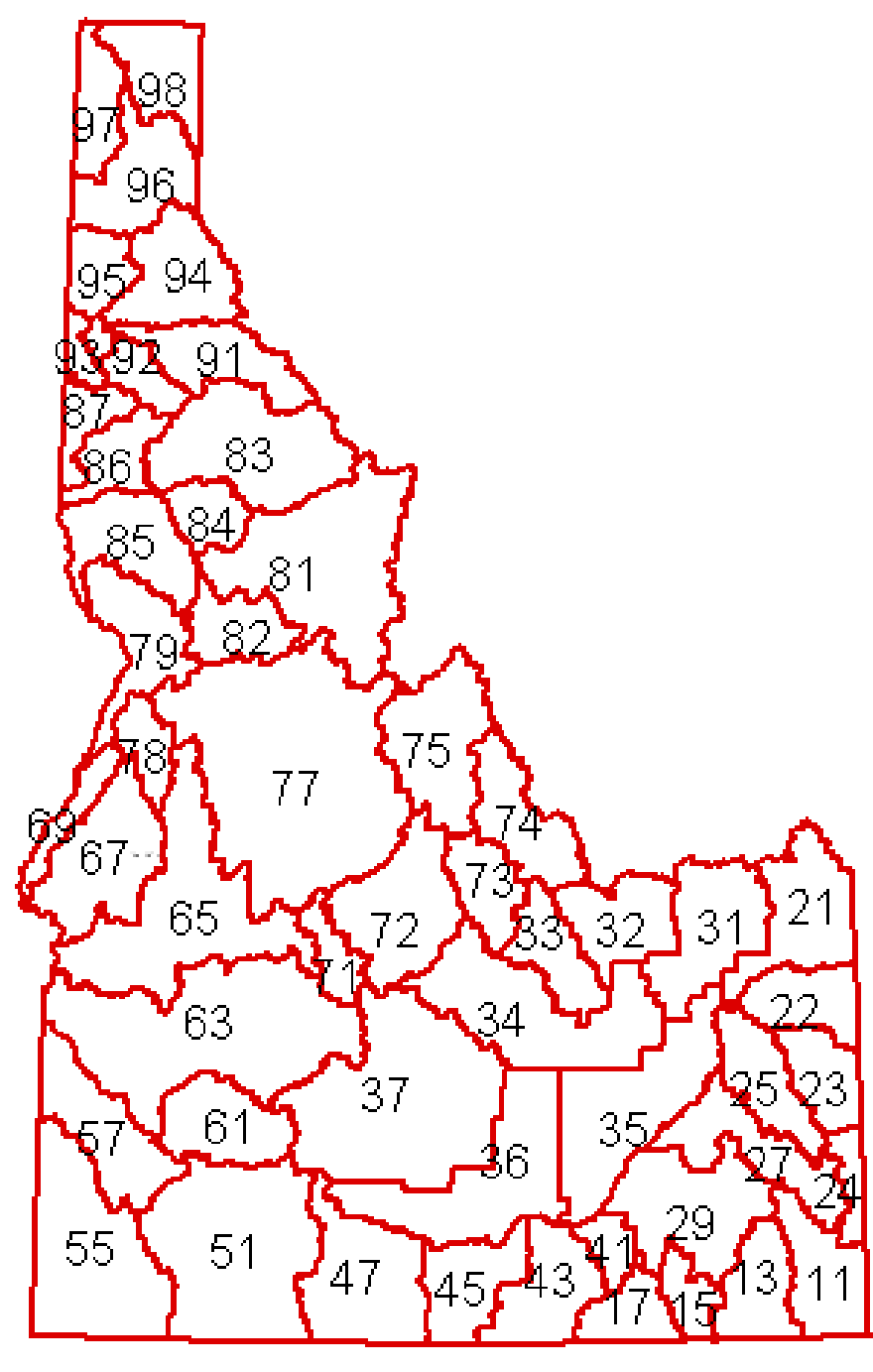
T10S R30E SEC. 1 & 12  
T10S R31E SEC. 7

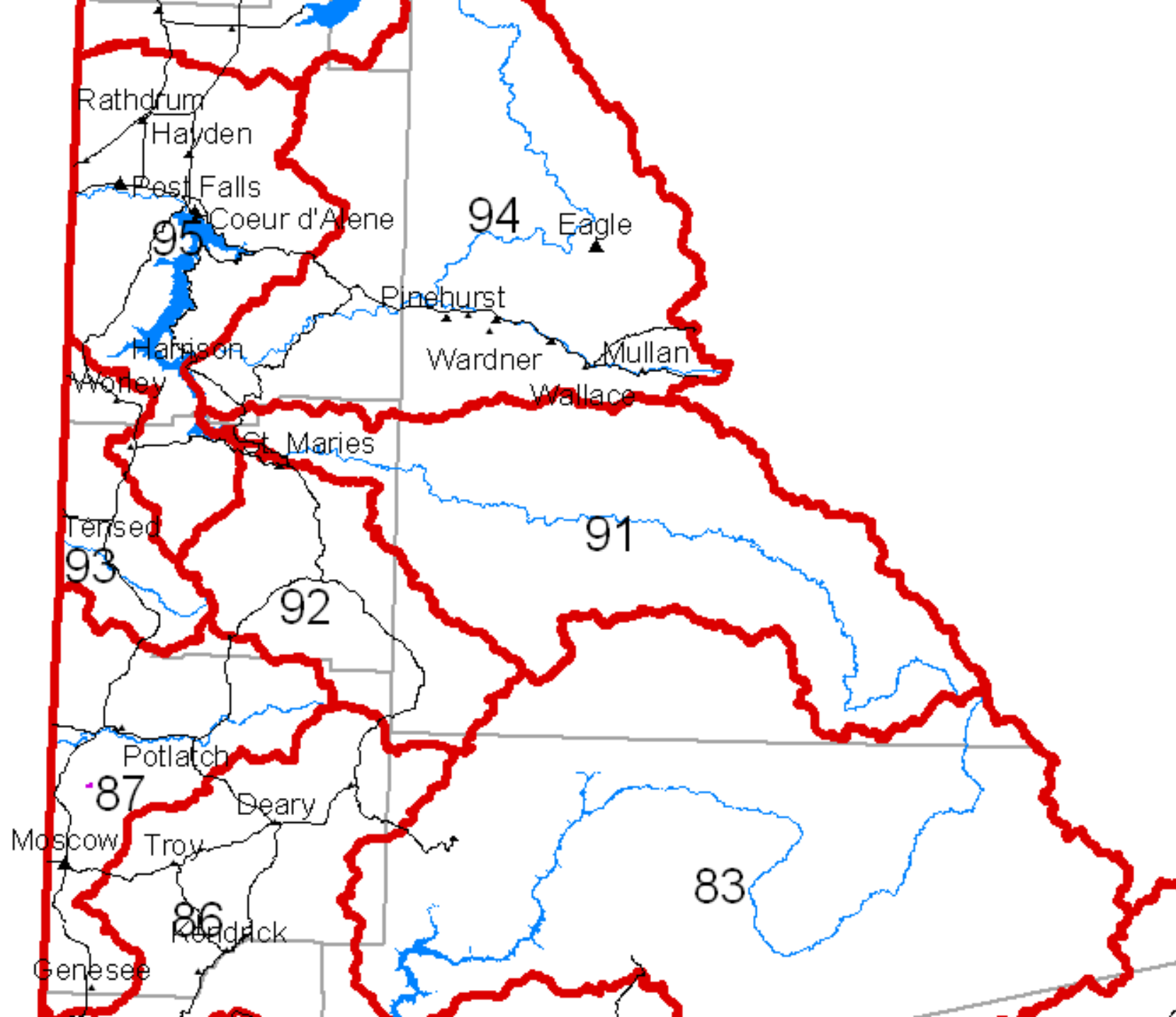


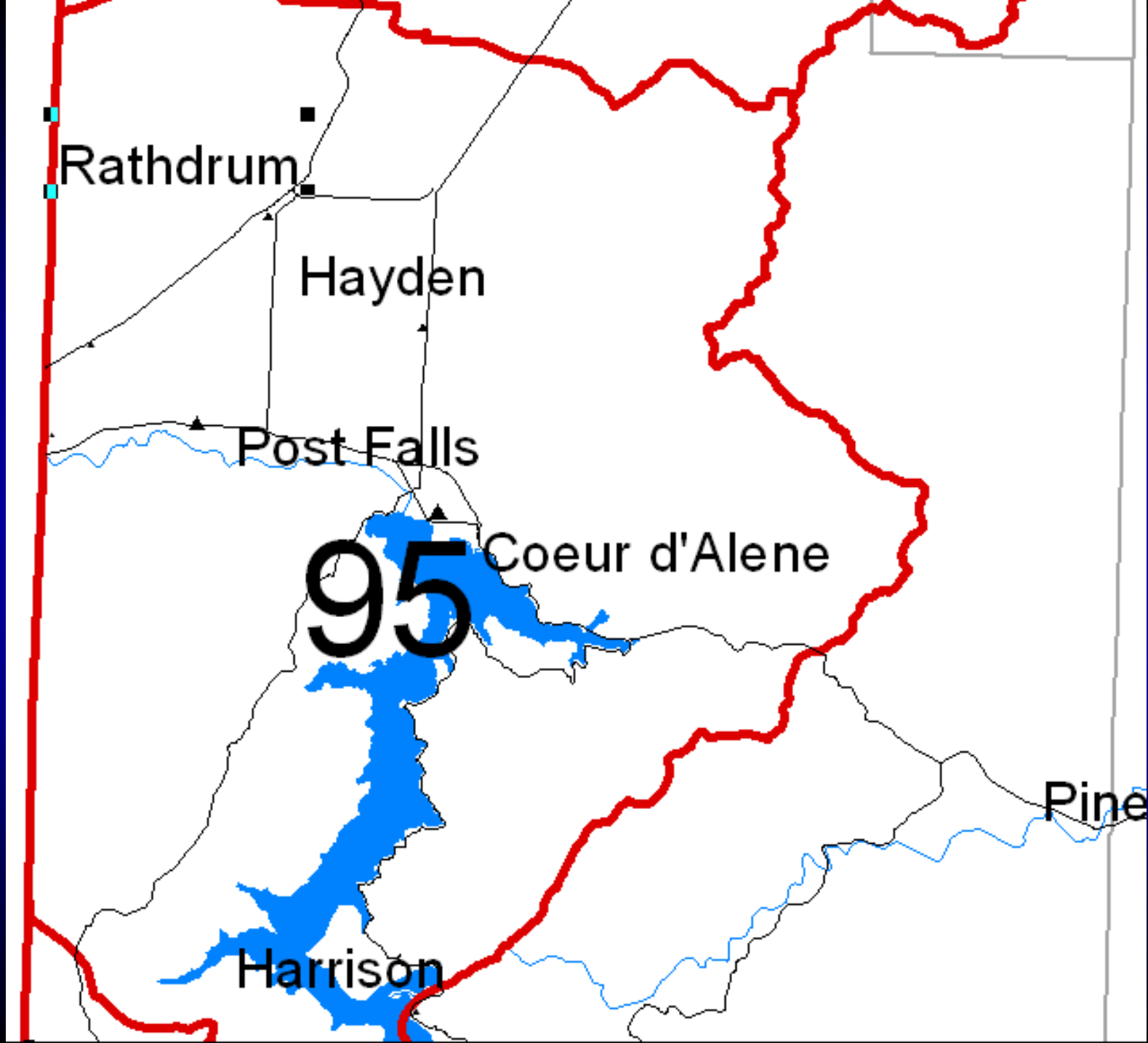
- RECOMMENDED PLACE OF USE
- POINT OF DIVERSION
- SECTION LINES
- 1/4 - 1/4 LINES

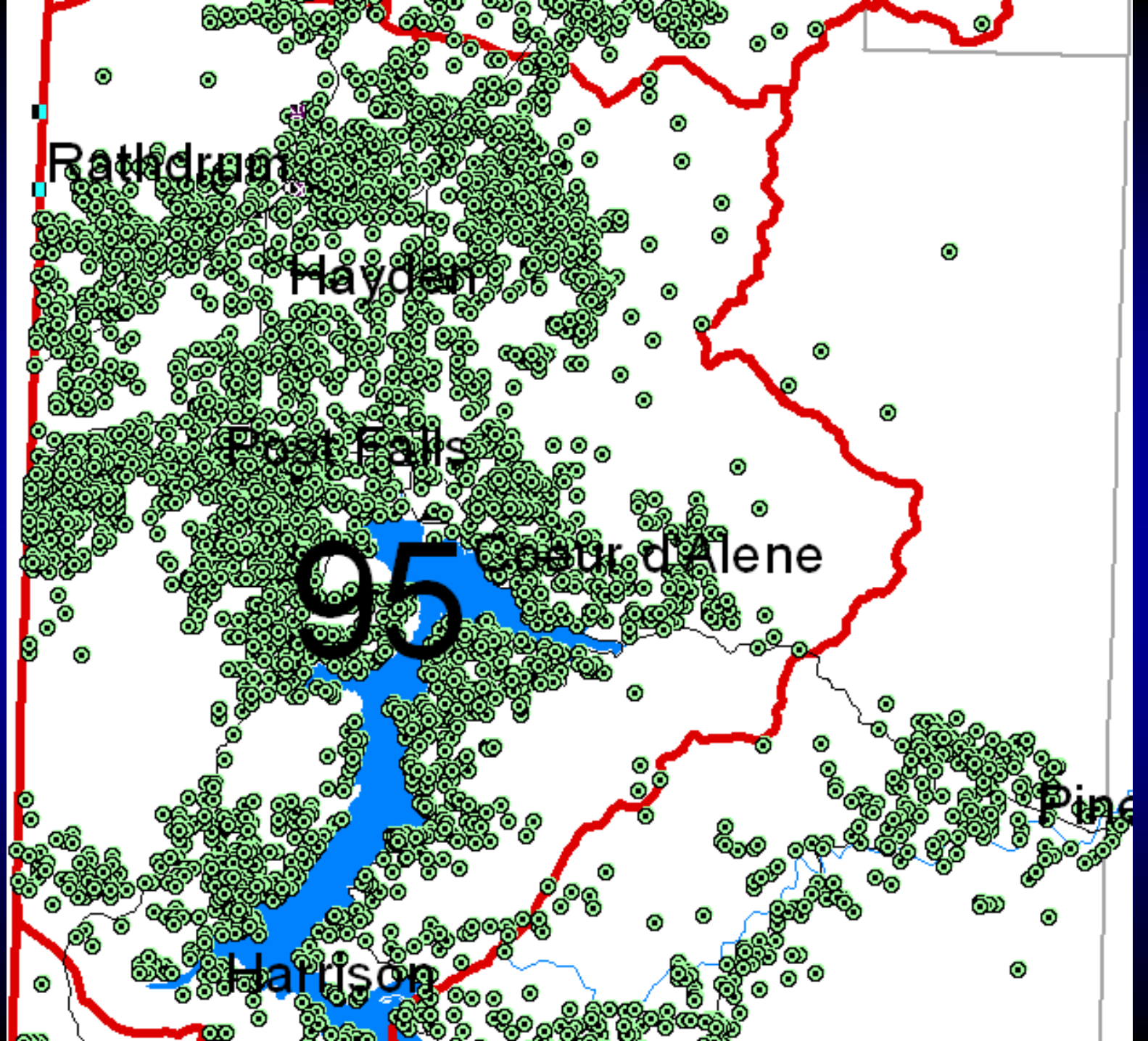
GIS PLACE OF USE PRESENTATION  
1987 & FOR 1988 NAPP PHOTOGRAPHY

DATA ENTRY BY: STEVE CLELLAND  
DATE: June 1, 1999

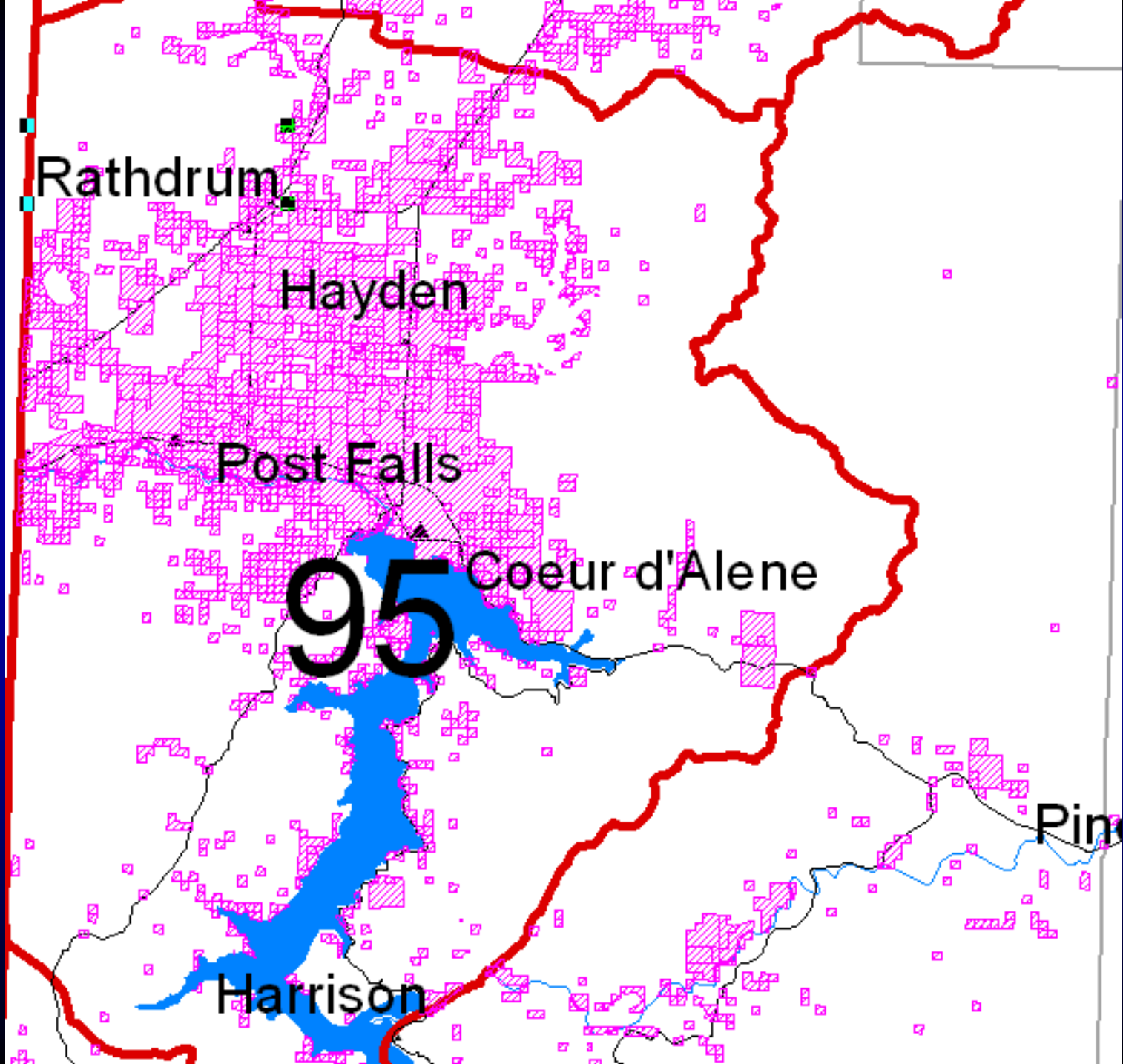










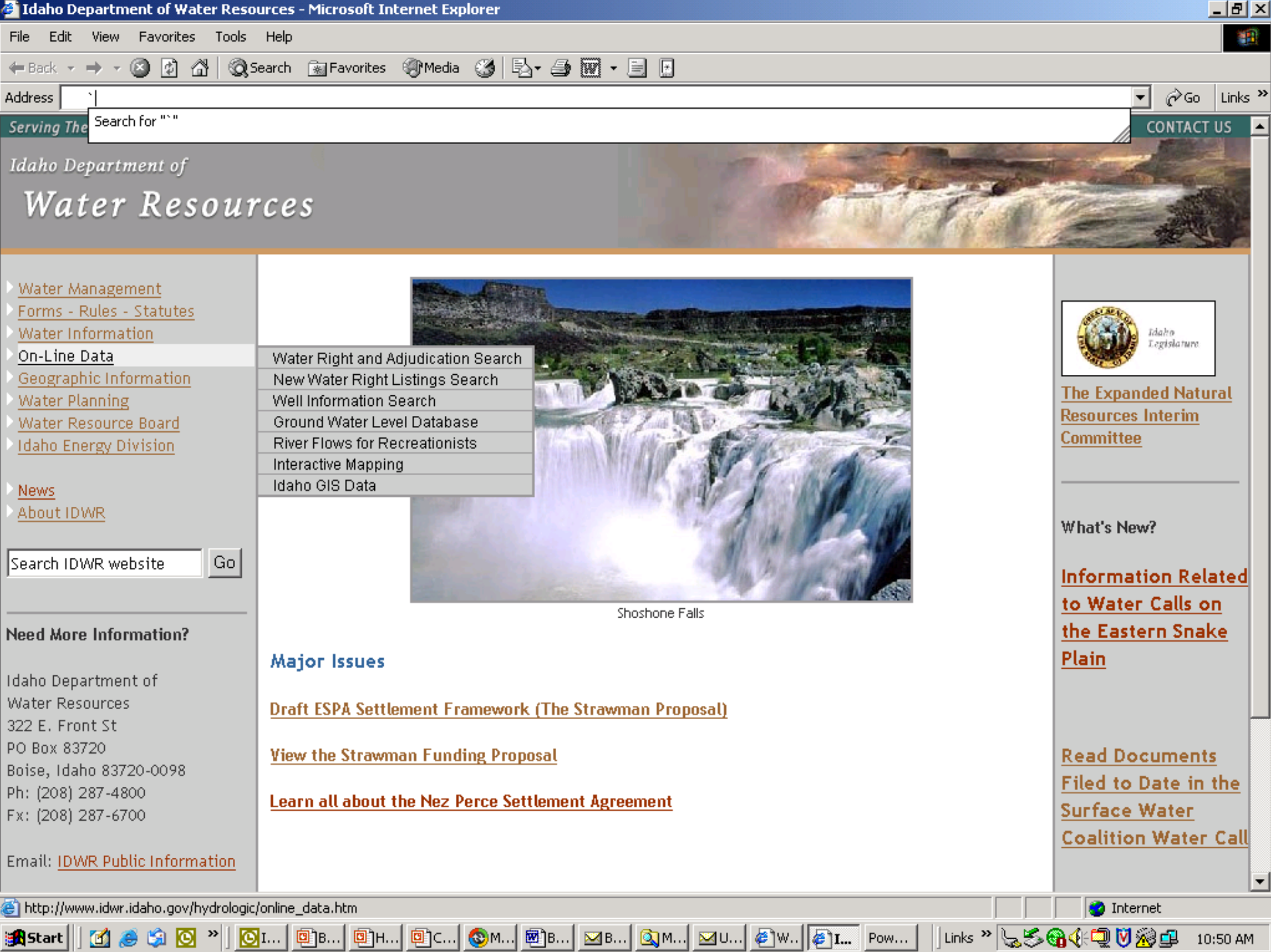


# Features of a 21<sup>st</sup> Century Adjudication (cont.)

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- Internet filing capability and Internet access to all adjudication information





# IDWR Water Right and Adjudication Search

Note: This search tool identifies active water rights and active transfers. If you want to search both active and inactive water rights, please check the box below.

☐ Search for both active and inactive water right records.

## Search by: Basin

Type of Query

USAGE INSTRUCTION

☐ All SRBA & Water Rights

SRBA

☐ Claims

☐ Recommendations

☐ Both

Water Rights

☐ Applications

☐ Permits

☐ Decrees, Licenses and Statutory Claims

☐ Transfers

☐ All of the above

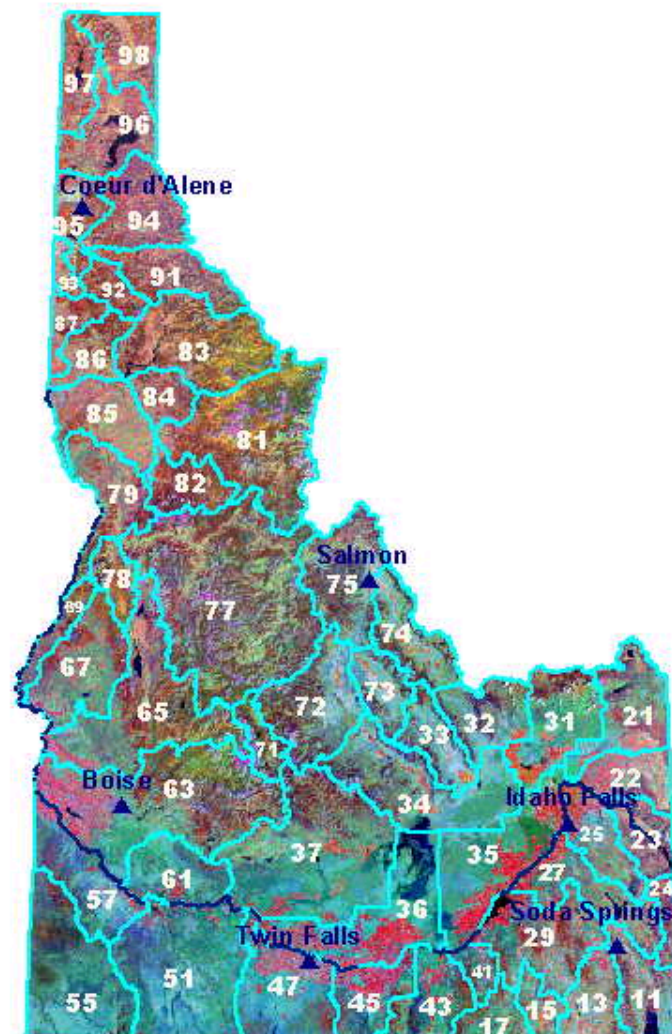
Basin Who What When Where Clear Search Help

Basin  To  (Example: 63)

Sequence  To  (Example: 7819)

Split Suffix  (Example: A)

(Hint: Water Right Numbers are comprised of three Components: the Basin Number, the Sequence Number, and sometimes a Split Suffix. For water right 63-7819A, the Basin Number is 63, the Sequence Number is 7819, and the Split Suffix is A. Not all water right numbers have Split Suffixes.)



# IDWR Water Right and Adjudication Search

Note: This search tool identifies active water rights and active transfers. If you want to search both active and inactive water rights, please check the box below.

☐ Search for both active and inactive water right records.

## Search Results

Type of Query

USAGE INSTRUCTION

☒ All SRBA & Water Rights

SRBA

☐ Claims

☐ Recommendations

☐ Both

Water Rights

☐ Applications

☐ Permits

☐ Decrees, Licenses and Statutory Claims

☐ Transfers

☐ All of the above

Basin Who What When Where Clear Search Help

Query parameters:

OrganizationName = blue lakes country

Search for: active Records

## Information for type: Statutory Claim, Decree and License

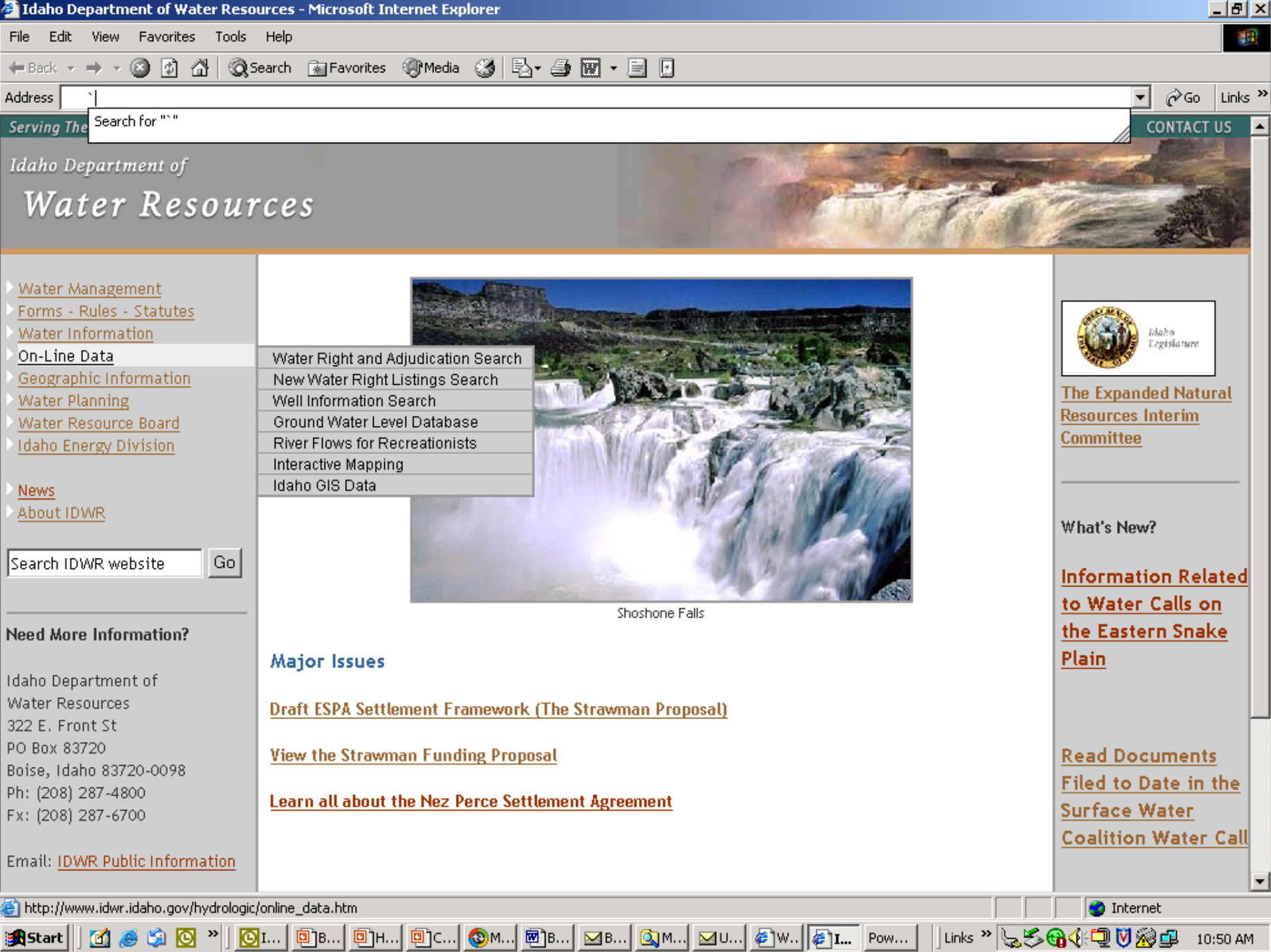
	Record	Basin	Sequence	Suffix	Version	Basis	Status	Priority Date	Diversion Rate	Source List	Water Uses	Owner List
Details Related Documents	1	36	2083	A		Decreed	Active	1949-05-26	1.15	ALPHEUS CREEK	IRRIGATION	BLUE LAKES COUNTRY CLUB INC (Current)
												BLUE LAKES

Start

Inbox - M... Microsoft ... ArcView ... VirtualTo... American ... SuperPag... VirtualTo... Wenet - ... http://w...



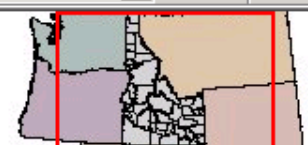
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## Idaho Department of Water Resources Internet Map Server



### Zoom/Pan



### Identify



### Locate Address



### Capture Screen



### Print



### Download



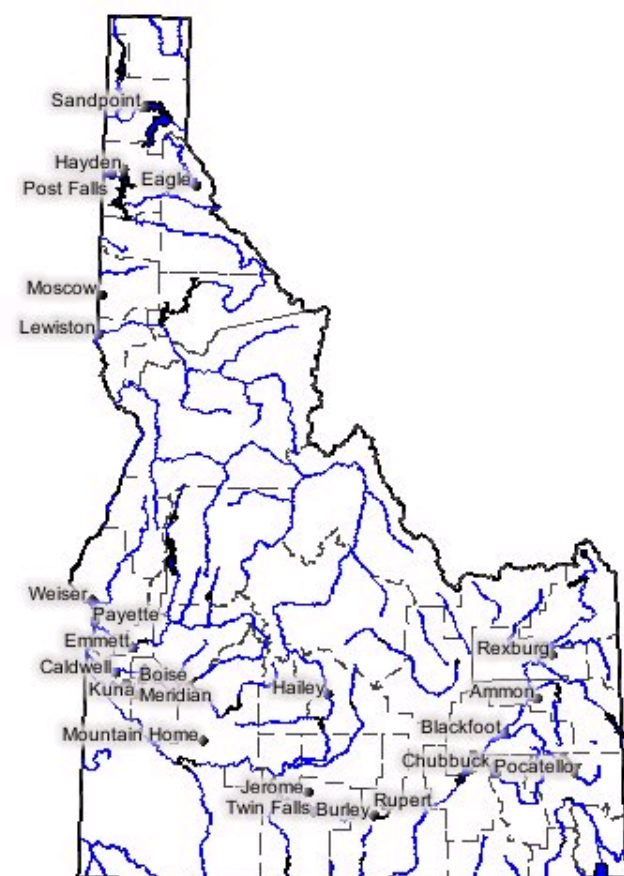
### Help



### Man



### Zoom In



IDWR - created with ESRI ArcIMS

0 158mi

### Layers Legend

- **Base Map**
  - ☐ Major Roads
  - ☐ Streets
  - ☐ Railroads
  - ☒ Major Cities
  - ☒ Cities
  - ☐ Urban Areas
  - ☒ Counties
  - ☐ PLS - Township/Range
  - ☐ PLS - Section
  - ☐ PLS - Quarter/quarter
  - ☐ Pipelines
  - ☐ Transmission Lines
  - ☐ Airports
  - ☐ Latitude-Longitude
  - ☒ State Boundary
- + **Administrative Boundaries**
- + **Regulatory Boundaries**
- **Water**
  - Lakes and Rivers
    - ☒ Major Rivers
    - ☒ Rivers
    - ☒ Lakes
    - ☐ Hydrologic Unit Boundaries
    - ☐ Dams

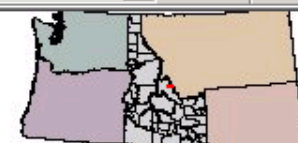
### Active Layer

Counties

Refresh Map



## Idaho Department of Water Resources Internet Map Server



Zoom/Pan



Identify



Locate Address



Capture Screen



Print



Download



Help

Man

Zoom In



Layers

Legend

- ☐ POD-Adjudication Cl.
- ☐ POD-Adjudication Re
- ☐ POD-Permits
- ☐ POD-Water Rights
- Place of Use**
  - ☐ POU-Adjudication Cl.
  - ☒ POU-Adjudication Re
  - ☐ POU-Permits
  - ☐ POU-Water Rights
- ☐ Snake River Basin Adjudi
- ☐ Irrigation Companies
- + Geology**
- + Miscellaneous**
- Background Images**
  - ☐ LANDSAT TM color IR
  - ☐ LANDSAT TM true color
  - ☐ SPOT 1998\_2001
  - ☐ 1:250k DRG (TOPO)
  - ☐ 1:100k DRG (TOPO)
  - ☐ 1:24k DRG (TOPO)
  - ☐ Color Shaded Relief
  - ☐ Gray Shaded Relief
  - ☐ Treasure Valley 94
  - ☐ Treasure Valley 39
  - ☒ Adjudication Photos

Active Layer

POU - Adjudication Recommenda

Refresh Map

Map: 2510767.6 , 1551995.74 -- Image: 446 , 462 -- ScaleFactor: 3.799300729866932

Start



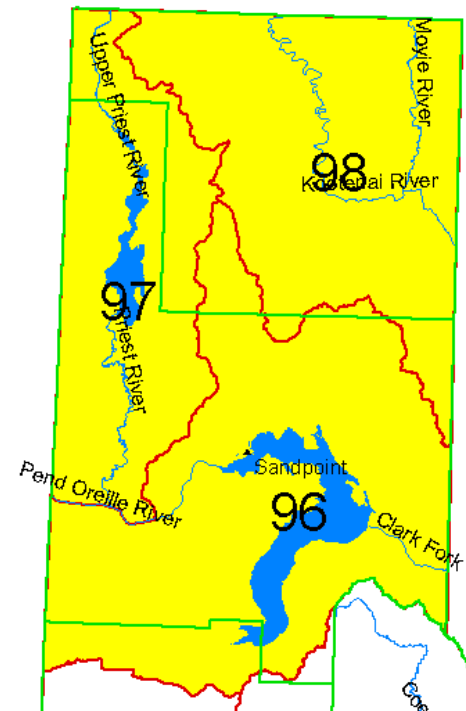
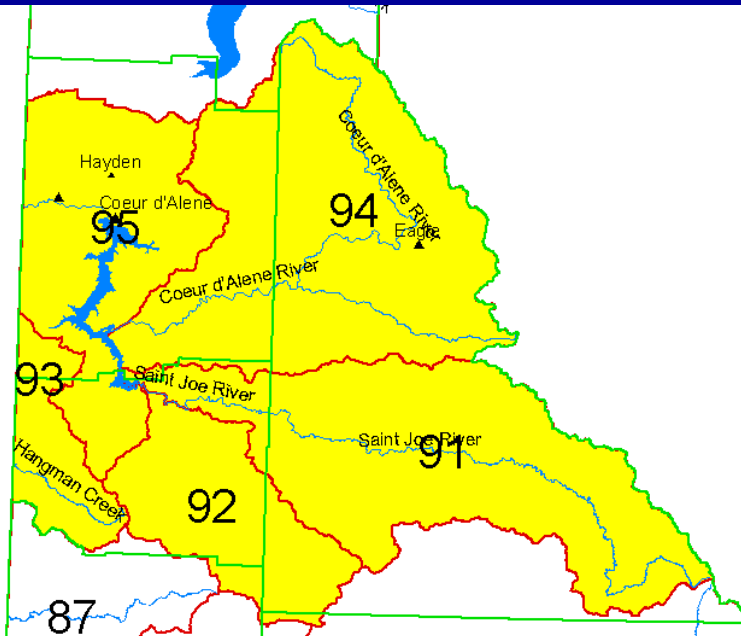
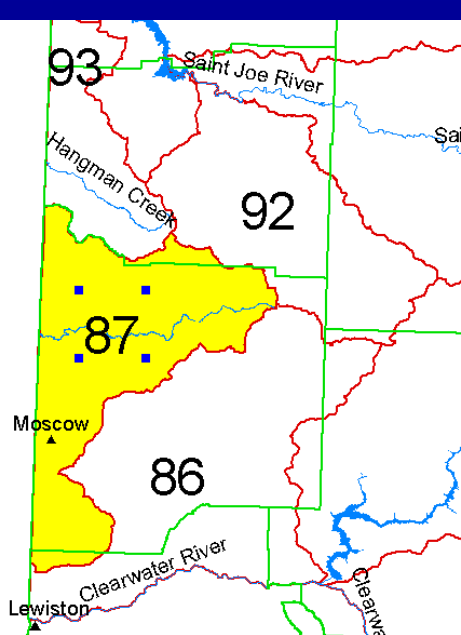
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# Potential Legislation Changes

- 42-1406B: Commencement – North Idaho River Basins



LEGISLATURE OF THE STATE OF IDAHO

Fifty-eighth Legislature

Second Regular Session -- 2006

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. \_\_\_\_\_

BY \_\_\_\_\_

AN ACT

RELATING TO THE ADJUDICATION OF WATER RIGHTS; AMENDING CHAPTER 14, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-1406B, IDAHO CODE, TO PROVIDE FOR THE COMMENCEMENT OF ADJUDICATIONS OF NORTHERN IDAHO WATER RIGHTS; AMENDING SECTION 42-1414, IDAHO CODE, TO INCREASE FILING FEES FOR NOTICES OF CLAIM; AND AMENDING SECTION 42-1425, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS.



COMMENCEMENT. (1) Effective management of the waters of Northern Idaho requires that a comprehensive determination of the nature, extent and priority of the rights of all users of surface and ground water be determined. Therefore, the director of the department of water resources shall petition the district court to commence adjudications within the terms of the McCarran amendment, 43 U.S.C. section 666, of the water rights from surface water and ground water sources in Northern Idaho through initiation of three proceedings. Separate petitions shall be filed for water rights adjudications for each of the following river basins, and related ground water sources whether or not hydraulically connected to a surface water source, within Idaho: the Coeur d'Alene-Spokane river basin, the Palouse river basin, and the Kootenai and Clark Fork-Pend Oreille river basins. The filing of each petition shall be contingent on legislative funding approval. Each petition shall describe the boundaries of the water source or water sources to be adjudicated.

(2) The adjudication shall be brought in any district court in which any part of the water source is located or before a court of special jurisdiction for water right adjudications. Unless otherwise ordered by the supreme court, special jurisdiction for the water rights general adjudications authorized by this section shall reside in the Snake River Basin Adjudication district court of the fifth judicial district of the state of Idaho, in and for the county of Twin Falls. The clerk of the district court in which the petition is filed shall send to the supreme court a true and certified copy of the petition. The supreme court, by order, shall assign the judge to preside over the general adjudication. Venue of the general adjudication shall be determined by order or rule of the supreme court and venue of hearings under the general adjudication shall be determined by order of the presiding judge.

42-1414. FEES FOR FILING NOTICE OF CLAIMS WITH THE DIRECTOR (1) In

order to provide an adequate and equitable cost-sharing formula for financing the costs of adjudicating water rights the department of water resources shall accept no notice of claim required under the provisions of section 42-1409, Idaho Code, unless such notice of claim is submitted with a filing fee based upon the fee schedule set forth below. Failure to pay the variable water use fee in accordance with the timetable provided shall be cause for the department to reject and return the notice of claim to the claimant. The fee schedule set forth below applies to adjudication proceedings commenced or enlarged on or after January 1, 1985.

(a) Flat fee per claim filed:

(i) Claims for domestic and/or stock watering rights based on permit, license, decree or statutory claim \$~~2~~50.00

(ii) Claims for all other rights \$~~50~~100.00

(b) Additional variable water use fee for claims filed based upon acreage, power generating capacity, c.f.s., or equivalent volume of water:

(i) Irrigation use (one fee irrespective of number of claims): \$ ~~1~~2.00 per acre

(ii) Power: \$ ~~3.50~~ 7.00 per kilowatt of capacity (manufacturer's nameplate rating)

(iii) Aquaculture: \$ ~~1~~20.00 per c.f.s.

(iv) Municipal, industrial, commercial, mining, heating, cooling: \$~~1~~200.00 per c.f.s.

(v) Public instream flow, public lake level maintenance, wildlife: \$~~1~~200.00 per c.f.s.

(2) Any change of place of use, point of diversion, nature or purpose of use or period of use of a water right by any person entitled to use of water or owning any land to which water has been made appurtenant either by decree of the court or under the provisions of the constitution and statutes of this state, prior to November 19, 1987, the date of commencement of the Snake River basin adjudication, and prior to January 1, 2006, for the northern Idaho adjudications authorized by section 42-1406B, Idaho Code, may be claimed in ~~a~~the applicable general adjudication even though the person has not complied with sections 42-108 and 42-222, Idaho Code, provided no other water rights existing on the date of the change were injured and the change did not result in an enlargement of the original right. Except for the consent requirements of section 42-108, Idaho Code, all requirements of sections 42-108 and 42-222, Idaho Code, are hereby waived in accordance with the following procedures:

## By Separate Appropriation Bill

Funding for the adjudication of water rights within the Coeur d'Alene - Spokane basin in FY 2007 from the state general fund in the amount of one million three hundred thirty five thousand dollars (\$1,335,000).

# Projected Counts

Basin	Decrees	Licenses & Permits	Statutory Claims	Totals	Predicted Adj Incl Dom	No. of Recorded Wells	Predicted Adj Counts
87		186	113	299	1500	1594	1500
91		113	69	182	1092	495	
92		141	65	206	1236	849	
93		33	42	75	450	303	
94		411	210	621	3726	1885	
95	716	1632	665	3013	15930	7326	
Total 91-95	716	2330	1051	4097	22434	10858	13000
96	24	1598	493	2115	8412	9698	
97		335	168	503	2012	1799	
98	14	568	227	809	3208	1396	
Total 96-98	38	2501	888	3427	13632	12893	10000
Totals							24500

# Projected Milestones – By Fiscal Year

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- 2006

- Enact legislation
- Identify funding

- 2007

- Prepare updated claims-taking software
- Develop on-line claims filing capability
- Arrange audio/visual links with the Court
- Obtain GIS images and layers
- Work with counties to create digital ownership information

# Projected Milestones – By Fiscal Year – Basins 91-95

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- 2008

- Commence the adjudication for Basins 91-95
- Conduct public meetings
- Send round-one service
- Conduct claims taking

- 2009-2010

- Conduct field examinations
- Prepare recommendations

- 2011

- File Director's Reports

- 2012

- Dispute resolution

# Projected Milestones – By Fiscal Year – Northern Basins

<b>Fiscal Year</b>	<b>Basins 91-95</b>	<b>Basin 87</b>	<b>Basins 96-98</b>
<b>FY08</b>	Commence, conduct meetings, take claims		
<b>FY09</b>	Conduct field examinations		
<b>FY10</b>	Prepare recommendations	Commence, conduct meetings, take claims	
<b>FY11</b>	File Directors Reports	Conduct field examinations	Commence, conduct meetings, take claims
<b>FY12</b>	Dispute Resolution	Prepare recommendations	Conduct field examinations
<b>FY13</b>		File Directors Reports	Prepare recommendations
<b>FY14</b>		Dispute Resolution	File Directors Reports
<b>FY15</b>			Dispute Resolution



# Projected Costs

Fiscal Year	Personnel	Operating	Contracting Costs	Personnel + Operating + Contracting	Court Costs	Totals
FY07	\$820	\$205	\$300	\$1,325	10	\$1,335
FY08	\$968	\$211	\$309	\$1,488	20	\$1,508
FY09	\$997	\$217	\$318	\$1,533	50	\$1,583
FY10	\$1,027	\$224	\$328	\$1,579	200	\$1,779
FY11	\$1,058	\$231	\$338	\$1,626	400	\$2,026
FY12	\$1,090	\$238	\$348	\$1,675	\$412	\$2,087
FY13	\$1,122	\$245	\$358	\$1,725	\$424	\$2,150
FY14	\$1,156	\$252	\$0	\$1,408	\$437	\$1,845
FY15	\$1,165	\$260	\$0	\$1,425	\$450	\$1,875
Total	\$9,404	\$2,083	\$2,299	\$13,785	\$2,404	\$16,189

Costs in Thousands  
Assumed inflation factor of 3%

# Potential Funding Mechanisms

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- Update fees (a third of the cost)?
- Provide General Fund (a third of the cost)?
- Other?

# Attorney General Concern

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- Determination of tribal water rights on Lake Coeur d'Alene could be a costly and long-term battle

# Next Steps

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- IDWR is awaiting legislative direction